*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.3705 OF 2007

% 20-12-2007

M/s. Model Financial Corporation, a company incorporated under the provisions of Indian Companies Act, 1956, having its office at Model House, Panjagutta, Hyderabad, rep. by its Director Mr V.S.R.P. Adusumilli and another.

.. PETITIONERS

And

M/s Indian Bank, ARMB, Hyderabad, rep. by its Chief Manager and another.

.. RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri R. Raghunandan

^ Counsel for respondents : Sri C. Pradeep Kumar

?CASES REFERRED :

1) 2007 (1) D.R.T.C. 188 (A.P.)

2) 2005 (2) D.R.T.C. 674 (A.P.)

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.3705 OF 2007

DATED: 20.12.2007

Between:

M/s. Model Financial Corporation, a company incorporated under the provisions of Indian Companies Act, 1956, having its office at Model House, Panjagutta, Hyderabad, rep. by its Director Mr V.S.R.P. Adusumilli and another.

.. Petitioners

And

M/s Indian Bank, ARMB, Hyderabad, rep. by its Chief Manager and another.

.. Respondents

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.3705 OF 2007

ORDER:

This Court issued Rule Nisi on 26.02.2007 and also granted interim stay, in W.P.M.P.No.4716 of 2007, on that day.

2. The writ petition is filed for a writ of Mandamus declaring the action of the respondents in issuing the impugned notice, dated 23.01.2007, under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as arbitrary, illegal and violative of Article 14 of the Constitution of India; and consequently to direct the respondents not to take any further action pursuant to the said impugned notice dated 23.01.2007.

3. W.V.M.P.No.2755 of 2007 is filed to vacate the interim order passed in W.P.M.P.No.4716 of 2007 on 26.02.2007. A reply affidavit also had been filed.

4. Sri R.Raghunandan, learned counsel representing the writ petitioners, had taken this Court through the relevant provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter in short referred

to as 'the Act' for the purpose of convenience) and placed strong reliance on Section 31 (i) of the Act and would maintain that agricultural lands would not fall within the purview of the Act and, hence, the respondents cannot further proceed with the impugned action. The learned counsel also made elaborate submissions in relation to the factual controversies involved in the matter.

5. On the contrary, Sri Pradeep Kumar, learned counsel representing the respondents, had taken this Court through the contents of the counter-affidavit and would maintain that the land involved is not an agricultural land at all and at any rate the land is not being used for agricultural purpose and, even otherwise, the petitioners are having an effective alternative remedy under Section 17 of the Act at the appropriate stage and, hence, viewed from any angle, the writ petition is liable to be dismissed. The learned counsel also placed strong reliance on certain decisions to substantiate his submissions.

6. The Director and authorized signatory of the 1st petitioner company had sworn to the affidavit filed in support of the writ petition. It is averred that 1st petitioner company had availed financial assistance from M/s Indian Bank, Putlibowli Branch, Hyderabad on 05.01.1996 and subsequently the said loan was merged with Hyderabad main branch and transferred to the 1st respondent, on the ground that the account had become irregular. It is further stated that an application, being O.A.No.247 of 2003, was filed before the Debts Recovery Tribunal, Hyderabad, under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the same is still pending and various measures including offers of settlement to

the 1st respondent bank and other consortium banks are still being carried out. It is also further stated that, while the matter stood thus, the 2nd respondent had issued a notice, dated 23.01.2007, under Section 13 (2) of the Act, calling upon the petitioners and others, who were shown as guarantors, to come forward and clear the entire due of Rs.2,90,02,301/- and stating that, on failure, the respondents would exercise their powers under Section 13 and other provisions of the Act for sale of the land shown in the schedule, on the ground that the said land was mortgaged to the 1st respondent bank and, therefore, it would be a secured assert, which can be sold under the provisions of the Act. It is further stated that the impugned notice, dated 23.01.2007, issued by the 2nd respondent, under Section 13 (2) of the Act, is without jurisdiction and in violation of the provisions of the Act as well as Section 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993. Further, it is stated that the land shown in the schedule given in the impugned notice is 8 acres 17 guntas of agricultural land situated at Kisnapur village, Patancheru Mandal of Ranga Reddy District. It is also stated that mortgage of the property was done by way of deposit of title deeds which would clearly show that the land described in the document is agricultural land. Further, Section 31 (i) of the Act excludes any security interest created on agricultural land from the provisions of the Act and, once agricultural land is excluded from the provisions of the Act, the provisions of the Act would not apply in any manner and consequently the issuance of impugned notice under Section 13 (2) of the Act is without jurisdiction and without any authority of law. It is also further stated that, as can be seen from the impugned notice itself, an application had been filed for the very same liability before the Debts Recovery Tribunal, vide O.A.No.247 of 2003, and the same is pending. The first proviso to

Section 19 (1) of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, specifically provides that any bank or financial institutions, which decides to proceed under the Act, would have to first make an application to the Debts Recovery Tribunal and withdraw the O.A. filed before the same and, after such withdrawal only, the banks and financial institutions can proceed under the Act. In the present case, no such application had been made and O.A.No.247 of 2003 had not been withdrawn till today and, thus, the action of the 2nd respondent in issuing the impugned notice, dated 23.01.2007, under Section 13 (2) of the Act, is clearly violative of the proviso to Section 19 (1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Further, it is averred that the 1st petitioner company is entitled for one time settlement scheme, however, the respondents, for the reasons best known to them, are refusing to extend the benefit of one time settlement scheme to the 1st petitioner company, even though such benefit is being extended to all other loanees of the bank. It is also stated that though the 1st petitioner company is making serious efforts for reviving itself, the action of the respondents in prejudicing the 1st petitioner company to pay large amounts of money is causing huge damage to its interests. In such circumstances, the writ petitioners approached this Court by filing the present writ petition.

7. In the counter-affidavit filed, brief facts had been stated as hereunder:

> "It is averred that at the request of the petitioner No.1 Company, the respondent bank sanctioned the credit facilities i.e. OCC Rs.151.50 lakhs and LC Rs.60.00 lakhs and subsequently OCC limit reduced from Rs.151.50 lakhs to 100.00 lakhs. To secure the said loan

facilities, the petitioners have mortgaged the properties totaling 8 acres 17 guntas in Sy.Nos.283A & 283AA, 299, 298, 284/A, AA, E, EE & OO & 285 situated at Hisnapur village, Patacnhervu Mandal, Medak District. After obtaining the loan amount, the petitioners have failed and committed default in repaying the amount due. Therefore, the loan account has been classified as non-performing asset since 31.03.2003 as per guidelines issued by the Reserve Bank of India. Subsequently, the bank had filed recovery application before DRT bearing O.A.No.247/2003 on 15.09.2003 and the same was pending. Later, on 23.01.2007, this respondent had issued demand notice to the petitioners under Sec. 13 (2) of the Act."

While replying to the parawise remarks, it is stated that it is true to say that the petitioners preferred this petition against the notice, dated 23.01.2007, issued by the respondents, under Section 13 (2) of the Act, but the allegation of the petitioners that the said notice is without jurisdiction and in violation of the provisions of the Act and the proviso of Section 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, apart from being arbitrary, oppressive, highhanded and violative of Article 14 of the Constitution of India, is not true and correct and, hence, denied. In reply to paragraph 5 of the affidavit filed in support of the writ petition, it is stated that to secure the loan facilities, the petitioners had mortgaged the properties totaling 8 acres 17 guntas in Sy.Nos.283A & 283AA, 299, 298, 284/A, AA, E, EE & OO & 285 situated at Hisnapur village, Patanchervu Mandal of Medak District, which are not at all agricultural land and no agricultural activity had taken place in or around this mortgaged land, as averred by the petitioners, and also the adjoining lands are either residential, industrial or industrial converted into residential lands. Hence, there is no bar on the respondents to proceed against the properties for

recovery of the debt due to the respondents under the Act. Further, in 2002, the party themselves had sought Term Loan from the bank for making residential layout, but however, the request was rejected by the bank. In reply to paragraph 6 of the affidavit filed in support of the writ petition, it is averred that the said paragraph is legally misconceived and there is no need to withdraw the O.A. filed before the Debts Recovery Tribunal to proceed under the Act, as alleged by the petitioners. In fact, the Hon'ble Supreme Court of India in M/s. Transcore vs. Union of India and another, in Civil Appeal No.3228 of 2006, held that withdrawal of the O.A. pending before the Debts Recovery Tribunal is not a precondition for taking recourse to NPA act. It is for the bank/financial institution to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw. It is further stated that the Hon'ble Supreme Court in para 46 of the said Judgment had categorically observed that 'in our view, the Judgments of the High Courts, which have taken the view that the doctrine of election is applicable, are erroneous and liable to be set aside'. It is also further stated that once the account became NPA, the borrower shall pay the entire outstanding amount and no provision is there in the Act to revive or regularize the account and the borrowers are not at liberty to ask for the revival or for the regularization of the account. However, bank does consider one time settlement as per the policy guidelines stipulated by the bank's board. In fact, under the above guidelines, bank sanctioned OTS of Rs.230 lakhs on 07.12.2006, but however, as party had not complied with the terms and conditions stipulated, the same had to be cancelled on 20.02.2007. Further, specific stand had been taken that there is an effective alternative remedy and, when further steps are taken, the writ petitioners are entitled to invoke the

said effective alternative remedy and, hence, the writ petition is a misconceived remedy.

8. A reply affidavit had been filed wherein, in paragraph 3, while adverting to the brief facts of the case given in the counter affidavit, the allegation that there was default in payment of loan was not admitted. It is stated that, in fact, it is not clear as to what amount the respondent bank had sanctioned and is claiming from the applicant company. Further, as stated by the respondents, they had filed a recovery application before the Debts Recovery Tribunal, vide O.A.No.247 of 2003, on 15.09.2003, wherein they claimed the limits as follows:

"4…….

a) 20.01.1995:

Nature of facility Limit (Rs. in lakhs)

i. O.C.C.: 100-00

ii. Imp/Inland L.C. 50-00

b) 05.01.1996:

Nature of facility Limit (Rs. in lakhs)

i. O.C.C.: 151-50

ii. Imp/Inland L.C. 60-00"

"11. The applicant bank sanctioned the following credit Facilities under Consortium Agreement dt.27.12.2000.

Nature of facility Limit (Rs. in lakhs)

i. O.C.C.: 24-00

ii. W.C.D.L.: 96-00

120-00"

It is further stated that in the counter-affidavit, the respondents stated that "it is respectfully submitted that at the request of the petitioner No.1 company, the respondent bank sanctioned the credit facilities i.e. OCC Rs.151.50 lakhs and LC Rs.60.00 lakhs and

subsequently OCC limit reduced from Rs.151.50 laksh to 100.00 lakhs" and it is not, therefore, understood as to which figure is correct. Further, the allegation that the petitioners have mortgaged the property totally admeasuring Acres 8-17 guntas, situated at Isnapur village of Patancheru Mandal is not denied, stating that the said allegation does not contain the crucial fact that the land, which has been mortgaged, is agricultural land. Further, in paragraph 5, while adverting to the allegations made in paragraph 5 of the counter-affidavit, the allegation that the land mortgaged to the respondent bank is not agricultural land is denied as absolutely false. It is stated that the land in question had actually been ploughed recently for agricultural operations and that the said fact itself would go to show that the land is being used for agricultural purposes. It is also further stated that the land had always been shown as agricultural land and there is a bore-well in the land for the said purpose and it is also evident from the respondent bank's own statement, both in the application and in the affidavit filed in lieu of chief examination before the Debts Recovery Tribunal, that the said land is agricultural dry land. Further, it is stated that unless the land is converted to non-agricultural purpose, by way of specific proceedings by the revenue authorities or such other appropriate and competent authorities, on application, the nature of the land as agricultural land would not change. In fact, the State of Andhra Pradesh has now enacted the Conversion of Agricultural Land to Non-Agricultural Purpose Act, 2006, which clearly shows that for any agricultural land to be converted as non-agricultural land, the same would have to be done only after appropriate proceedings, declaring the conversion of the agricultural land to non-agricultural purpose. It is further stated that there is no such declaration or proceedings to show that the land is ceased to be an agricultural land and, in the circumstances, the

contention of the respondents that the land is not agricultural land any more is factually incorrect and has no basis in law also. Further, the allegation that the request by the petitioners for making residential layout of the land to convert the land from agricultural to non-agriculture is denied. It is also further stated that the then Managing Director of the 1st petitioner company (now a Director and Signatory to this reply) had, in fact, made an application to the respondent bank, in his personal capacity, for the sole reason of helping the 1st petitioner company to repay its outstanding loans to the respondent bank, and that, even wrongly assuming that the 1st petitioner company had made such an application, such an intent does not tantamount to the land's basic nature getting altered, until the necessary procedure is followed, as per law, with the relevant authorities. It is also further stated that, in fact, the term loan was not sanctioned to the applicant on the ground that the said land is agricultural land, and that no such conversion had taken place and the land continues to be agricultural land. While adverting to the averments made in paragraph 7 of the counter-affidavit, it is averred in paragraph 7 that the allegation that there is no provision in the Act to revive or regularize the account is a misleading statement. It is also averred that the averment of the respondents that the bank then considered One Time Settlement scheme itself shows that One Time Settlement scheme is considered in the policy guidelines stipulated by the bank's board and the guidelines laid down by the Reserve Bank of India. Further, it is stated that the allegation that the petitioners did not comply with the terms and conditions of the One Time Settlement sanctioned on 07.12.2006 is not correct, and that the terms and conditions of the One Time Settlement scheme offered on 07.12.2006 were highly discriminatory to the petitioners and were not on par with the One Time Settlement scheme offered to other

borrowers. It is also further stated that the cancellation of the One Time Settlement on 20.02.2007 was for the reasons which were extraneous to the compliance of the terms by the petitioners. Further, it is stated that not only the 1st petitioner Company, but its Managing Director, in his personal capacity, was also ready to expose himself to liability for the purpose of clearing the outstanding amounts to the respondent bank, and that offers were made to the respondent bank starting from Rs.20 lakhs and a written offer was made for Rs.36 lakhs in March, 2006. However, after repeated negotiations, a final offer for Rs.55 lakhs was made, after being mutually accepted by the applicant Company and the Chief Manager, ARMB and the DGM, Circle Office, Hyderabad. It is also further averred that a handwritten final offer letter, dated 08.07.2006, was prepared then and there in their earnest effort to settle the issue, however, after taking all the relevant affidavits/letters for processing the OTS proposal, the Chief Manager, went back on his word and wanted the applicant Company to pay an excess amount of 4 times of the amount orally agreed to, for extraneous reasons, and, therefore, it is inappropriate on the part of the respondents to make false and malicious allegations that the applicants have no intent to settle the dues to them. The allegation relating to the alternative remedy also had been replied in paragraph 8 of the reply affidavit.

9. These are the respective stands taken by the parties in the affidavit, counter-affidavit and the reply affidavit, and certain material papers relating to the copies of the letters and correspondence also had been relied upon.

10. Section 31 of the Act reads as hereunder:

"31. The provisions of this Act shall not apply to-

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) any properties not liable to attachment or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty percent of the principal amount and interest thereon."

11. Strong reliance was placed on **V.K. Shekhar v. Indian Bank,**

Greamset Branch, Chittoor & another[1], wherein the learned Judge of this Court, at paragraphs 19, 21, 22, 25, 27, 28, 30, 31, 32 and 33, observed as hereunder:

> "19. It is true that the 1st proviso inserted to Sec.19 (1) of the RDDBFI Act, 1993 provides that the bank or financial institution has to make a petition seeking permission of the Tribunal to withdraw the application for the purpose of taking action under the SRFAESI Act, 2002. However, the fact that no corresponding amendment was brought to the provisions of the SRFAESI Act, 2002, particularly Secs.35 and 37 of the said Act makes clear the intention of the Legislature that the overriding effect given to the provisions of the SRFAESI Act shall continue and that the right conferred on the secured creditor i.e., the bank and financial institution under the said Act to proceed against the securities without the intervention of the Court or Tribunal shall not be affected in any manner whatsoever.
>
> 21. As summed up by the Full Bench of this Court in *B. Sudhakar v. Union of India,* A.I.R. 1995 A.P. 86, it is a well-settled rule of construction that the meaning and scope of the *proviso* are dependent on the principal enacting provision to which it is tacked as a proviso and it cannot be taken as a separate or independent enactment to be read as divorced from the context unless the context itself compels such a treatment of the proviso. If the said principle is applied, there shall not be any dispute that the 1st proviso appended to Sec. 19 (1) of the RDDBFI Act, 1993, which is a procedural provision, in the absence of any other express provision either under the RDDBFI Act, 1993 or the SRFAESI Act, 2002 cannot be interpreted as an independent provision curtailing the substantive right conferred on the bank and financial institution under the SRFAESI Act,2002 to proceed against the securities without the intervention of the Court or Tribunal .
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> 22. On a careful consideration of the object and

purport of both SRFAESI Act 2002 and the RDDBFI Act, 1993, it appears to me that the provisos inserted to Sec. 19 (1) of the RDDBFI Act, 1993, by way of amendment had only conferred a discretion on the Tribunal to regulate its own proceedings i.e., either to proceed with the recovery proceedings pending on its file or to close the same by granting permission to the bank or financial institution for withdrawal in the light of the facts and circumstances of the particular case. Any other interpretation would amount to empowering the Tribunal, which is an adjudicatory body under the RDDBFI Act, 1993, to regulate the substantive rights conferred on the secured creditor under Sec. 13 of the SRFAESI Act, 2002. Such interpretation which runs contrary to the basic scheme and object sought to be achieved by the SRFAESI Act, 2002 is impermissible.

25. In view of the overriding effect given to the SRFAESI Act, 2002 under Secs.35 and 37 and having regard to the nature of the remedy provided under the said Act which enables the banks and financial institutions to proceed against securities without the intervention of the Court in the event of default by the borrower, it is clear that the remedy available under the SRFAESI Act, 2002 is much more efficacious remedy for faster recovery of non-performing assets (N.P.As.). It is a special remedy which can be enforced against a particular class of borrowers. As noted above, it is in addition to the remedies already available under other laws in force, including RDDBFI Act, 1993 and even in case of any inconsistency it is given an overriding effect. Hence, the mere fact that the remedies under both the enactments are aimed at a common purpose of recovery of debts due to the banks and financial institutions will not render the same equal remedies compelling the banks and financial institutions to choose only one of them. Therefore, the doctrine of election is not attracted.

27. On a perusal of the 1st proviso to Sec. 19 (1) of the RDDBFI Act, 1993, extracted above, it is obvious that the concluding words *that Act* refer to the SRFAESI Act, 2002.

There can also be no dispute about the fact that the words *for the purpose of taking action under the SRFAESI Act* refer to issuance of notice under Sec. 13 (2) of the SRFAESI Act, 2002 which is an initial step for recovery of debts invoking the provisions under the SRFAESI Act, 2002. Hence, if the 1st proviso is analysed with particular reference to the concluding words *If no such action had been taken earlier under that Act,* it is clear that the permission from the Tribunal for withdrawal of an application pending before it is necessary only where no action under the SRFAESI Act, 2002 had been taken earlier. In other words the requirement of withdrawal of the application pending before the Tribunal is attracted only where the notice under Sec. 13 (2) of the SRFAESI Act, 2002 was not issued by the bank or financial institution by the date of institution of the recovery proceedings in the Tribunal. It is also clear that whether the application was filed in the Tribunal before or after the enforcement of the Amendment Act, 2004 is immaterial, but what is relevant is whether the application is pending before the Tribunal by the date of taking action under the SRFAESI Act, 2002 i.e., by the date of issuance of notice under Sec. 13 (2).

28. In the case on hand, the notice under Sec. 13 (2) of the SRFAESI Act, 2002 was issued on 13th September, 2005 and much thereafter Original Application No.204 of 2005 was filed in the D.R.T. as the loan was getting time-barred. It is specifically pleaded so by the respondents in the counter-affidavit which has not been contradicted by the petitioner. In the circumstances, as per the above interpretation given to the 1st proviso appended to Sec.19 (1) of the RDDBFI Act, 1993, it is not necessary for the respondents to seek withdrawal of Original Application No.204 of 2005 before issuing the impugned sale notice. Since admittedly the action under the SRFAESI Act, 2002 by issuing the notice under Sec. 13 (2) was taken by the respondent No.1- bank prior to filing of Original Application No.204 of 2005, the 1st proviso to Sec. 19 (1) of the RDDBFI Act, 1993 is not

attracted to the case on hand. On that ground also, the contention of the petitioner that the impugned sale notice is illegal is liable to be rejected.

30. Whereas the petitioner pleaded that all the properties sought to be sold under the impugned notice are either residential houses or agricultural properties which are exempted from the operation of the SRFAESI Act, 2002, the respondent bank denied the same contending that the lands offered as security are not agricultural lands. In the counter-affidavit, it has been explained that the said lands are poultry units and the petitioner has been doing poultry business on the said lands and no agricultural activity is undertaken.

31. Though the petitioner in his affidavit-in-reply disputed the version of the respondent and contended that the poultry farms which are constructed in the agricultural lands are declared as agro-industries and the same cannot be held to be non-agricultural lands, such a disputed question of fact cannot be enquired into and decided by this Court in writ proceedings under Art.226 of the Constitution of India.

32. That apart, admittedly the notice under Sec.13 (2) of the SRFAESI Act, 2002 was issued by the respondent bank on 13th September, 2005 calling upon the petitioner to pay the amount due within 60 days. The petitioner did not make any representation nor raised any objection as contemplated under Sec.13 (3-A) of the SRFAESI Act. Under sub-section (3-A) of Sec.13 of the SRFAESI Act which was inserted by Amendment Act, 2004 with effect from 11th November, 2004, the secured creditor is bound to consider the objections raised by the borrower and in case the objections are not acceptable, the same shall be communicated within one week of receipt of the objections assigning the reasons for non-acceptance of the objections. As held by the Division Bench of this Court in W.A.No.2577 of 2005, dated 29th December, 2005, sub-section (3-A) of Sec.13 of the SRFAESI Act entitles the borrower not only to question the amount specified in the notice under Sec.13 (2) but also to

question the very initiation of proceedings under the SRFAESI Act and the jurisdiction of the secured creditor to invoke the provisions of the SRFAESI Act. No explanation is forthcoming from the petitioner as to why such objection was not raised in response to the notice under Sec.13 (2) of the SRFAESI Act. If only the petitioner had availed the said opportunity, the respondent would have considered the same and the acceptance or otherwise of the objection would have been communicated to the petitioner assigning reasons.

33. Be that as it may, now that the notice under sub-section (4) of Sec.13 of the SRFAESI Act has already been published and consequently the impugned sale notice was issued for sale of the secured assets which is one of the measures envisaged under sub-section (4) of Sec.13 of the SRFAESI Act, an effective alternative remedy as provided under Sec. 17 (1) of the SRFAESI Act is available to the petitioner."

12. Reliance was also placed on **Neel Madhav Mining Pvt. Ltd.& others. v. Authorized Officer, U.B.I., Vishakhapatnam & others**[2], wherein the Division Bench of this Court, at paragraphs 14, 15, 16 and 17, observed as hereunder:

"14. It is a settled principle of law that the existence of an alternative remedy is not a bar for exercise of jurisdiction under Art. 226 of the Constitution of India, but it is only one of the relevant considerations, which should guide the Court while exercising jurisdiction under Art.226 of the Constitution. In a case like the one before us, there the question is principally about the legality and the jurisdiction of the authority, which initiated action against the petitioners, the Court would not normally be reluctant to deny the access to the petitioners to invoke jurisdiction under Art. 226 of the Constitution, more particularly, where the interpretation of the enactment, which are of recent origin, is involved, and where the precedents are lacking to guide the

statutory Tribunal constituted under the Act. We, therefore, reject the submission of the learned counsel for the respondent-bank based on the availability of alternative.

15. Coming to the main question whether the condition such as the one imposed by the impugned order is irrational one, we accept the submission made by the learned senior counsel for the petitioners. The principal question in the appeal before the D.R.T., which incidentally is also relevant for the purpose of deciding the interlocutory application as to whether the action of the respondent-bank in invoking Sec. 13 (4) of the Act and proposing to take possession of the land in dispute is legal and within the jurisdiction of the bank? No doubt, Sec. 13 (4) of the Act authorizes the creditor such as the respondent-bank to take possession of the secured assets of the borrowers. But by virtue of the declaration made under Sec.31 of the Act, the provisions of the Act do not apply to "any security interest created in agricultural land". Therefore, the expression 'secured assets' occurring under Sec.13 (4) (a) of the Act must necessarily be interpreted as an asset other than agricultural land. The question, of course, whether the land in question is an agricultural land or not, requires to be decided on the basis of appropriate evidence to be led in the appeal. But, at the stage of considering the interlocutory applications, the Tribunal, while deciding the question whether the creditor can be permitted to take possession of agricultural land or not, cannot totally ignore the plea of the debtor that the land is an agricultural land and impose a condition such as the one imposed in the impugned order. In our view, such a condition tantamounts to placing a premium on the constitutional right of the petitioners under Art.300-A of the Constitution. Any person, who is not in a position to comply with such an onerous condition would, in effect, be deprived of his right to the enjoyment of the property i.e. agricultural land, a consequence which is not intended under the scheme of the Act. In the circumstances, we are of the opinion that the order under appeal insofar as it granted interim stay of taking of possession of the property in

dispute on condition the petitioners deposit an amount of Rs.20 lacs, is an order passed in exercise of the discretion, no doubt, vested in the Tribunal, but we must conclude that such a discretion was exercised irrationally.

16. The object of authorizing the creditors to take possession of the assets of the debtors appears to be to safeguard the interests of the creditors in the event of successful culmination of the proceedings under the Act or under the proceedings before the D.R.T. The object could still be achieved by injuncting the petitioners from alienating the property in dispute or from creating any encumbrance in the property or altering its nature or by ordering both particularly when the dispute is whether the asset is amenable to the jurisdiction under Sec. 13 (4) of the Act or not.

17. We, therefore, allow the writ petition and declare that the imposition of condition of depositing Rs.20 lacs for availing the injunction granted by the Tribunal is illegal. However, we direct the petitioners not to alienate or create any encumbrance or in any way alter the question whether the property in dispute is agricultural land or not, would be decided by the Tribunal. In the circumstances, there shall be no order as to costs."

13. Certain submissions were made relating to the aspect- 'whether the subject matter of the security would fall within the agricultural lands or not and, at present, whether they are being put to agricultural use or not'. It is needless to say that predominantly this is a question of fact and these aspects cannot be gone into by a Writ Court. At any rate, further steps had not been taken by the petitioners. As such, the petitioners are at liberty to make appropriate representation ventilating their grievances to the banking institution and may be that the banking institution may consider such grievances

in accordance with law. It is also made clear that the petitioners are at liberty to invoke the appropriate remedies in accordance with law, at the appropriate stage, as provided under the provisions of the Act. Except giving this liberty, no further positive relief as such can be granted in this writ petition.

14. Accordingly, subject to the liberty specified supra, the writ petition is dismissed. No order as to costs.

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(**P.S.NARAYANA,J)**

L.R. Copy to be marked.
20-12-2007.
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[1] 2007 (1) D.R.T.C. 188 (A.P.)
[2] 2005 (2) D.R.T.C.674 (A.P.)